

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 23, 2009

IN RE: ANGEL P. and RAY S.

**Appeal from the Chancery Court for Anderson County
No. 09CH0040 William E. Lantrip, Chancellor**

No. E2009-01578-COA-R3-PT - FILED DECEMBER 18, 2009

Denise S. (“Mother”) is the biological mother of Angel P. and Ray S. (the “Children”). Following a trial, the Trial Court terminated Mother’s parental rights to the Children on three separate grounds and after finding that terminating Mother’s parental rights was in the Children’s best interest. Mother appeals. Mother maintains that the Trial Court erred when it found that the Department of Children’s Services (“DCS”) had proven by clear and convincing evidence that grounds to terminate her parental rights existed. Mother also argues that the Trial Court erred when it found that DCS had proven by clear and convincing evidence that it was in the Children’s best interest for her parental rights to be terminated. We modify the judgment of the Trial Court and, as modified, the judgment of the Trial Court terminating Mother’s parental rights is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Chancery Court Affirmed as Modified; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Brian J. Hunt, Clinton, Tennessee, for the Appellant, Denise S.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Jill Z. Grim, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee, Department of Children’s Services.

OPINION

Background

In January 2009, DCS filed a petition seeking to terminate Mother's parental rights to the Children.¹ As grounds for terminating Mother's parental rights, DCS alleged that: (1) pursuant to Tenn. Code Ann. §36-1-113(g)(1), Mother had abandoned the Children by willfully failing to visit the Children or engaging in only token visitation with them during the four month period immediately preceding the filing of the petition; (2) pursuant to Tenn. Code Ann. § 36-1-113(g)(2), Mother had failed to substantially comply with the statement of responsibilities in her various permanency plans; and (3) pursuant to Tenn. Code Ann. § 36-1-113(g)(3), the conditions which led to the Children's removal or other conditions which made the Children's return to Mother's care unsafe continued to persist. Finally, DCS alleged that it was in the Children's best interest for Mother's parental rights to be terminated.

In March 2009, a guardian ad litem was appointed on the Children's behalf, and an attorney was appointed to protect Mother's interests.

The trial was in May 2009. All parties were present and represented by counsel. Mother was the first witness. Mother testified that she has had a total of six children, four of whom are currently alive.² One child, Steven, lived with his grandmother in Arizona and died last year at the age of 15. Another child, a daughter, died in 1996, less than two months after her birth. Bern L. is the biological father of Mother's deceased daughter as well as the biological father of Angel P. Bern L. was married to Mother's mother when Mother gave birth to her now-deceased daughter. Even though Mother was only 15 years old when she had the first child fathered by her step-father, she insisted that her mother not have any charges filed. Bern L., is no longer married to Mother's mother. Mother currently is married to Ray S.'s father, who also is named Ray.

Mother testified that her health is not good. She has a seizure disorder, a blood clotting disorder, COPD, fibromyalgia, carpal tunnel syndrome, "neuro damage to my frontal lobe of my brain," and heart damage from seizures. Mother also claims that she suffers from bi-polar disorder and rheumatoid arthritis. Mother stated she recently was approved for disability benefits and that she is completely disabled.

¹ The Children have different biological fathers, and the petition also sought to terminate their parental rights. The biological father of Angel P. voluntarily surrendered his parental rights prior to trial. The parental rights of Ray S.'s biological father were terminated following trial, and no appeal was taken from that judgment which is now final. In our discussion of the facts, we omit the trial testimony pertaining to the termination of the parental rights of Ray S.'s biological father.

² In addition to the two children at issue in this case, Mother has two other living minor children, Deseria P. and Donald P. Although these children may be mentioned from time to time in this Opinion, these two children are residing with their paternal grandparents and are not at issue in this case.

Mother worked “off and on” at a Waffle House over the past 13 years. Although she has a car (a 1995 Sunbird), Mother does not have a driver’s license. If Mother regained custody of the Children, she would receive help from her husband and her mother with regard to transporting the Children to school, the doctor, etc.

Mother has been living with her father since September 2008. Her father owns a two bedroom trailer. Prior to that, Mother lived at an address located on Dutch Valley Road. Mother acknowledged that, at times, there was no running water at the Dutch Valley Road address. Mother moved to the Dutch Valley Road address after she and her husband “lost the trailer in Knoxville.” Mother currently receives \$300 per month in food stamps and relies on her mother and father for financial assistance, even though both of her parents currently are receiving unemployment benefits. In fact, Mother admitted that her unemployed parents have “been paying [her] bills pretty much since August of ‘08,” even though Mother is supposed to pay the money back. Mother stated that her husband and her mother will assist her with the Children if needed. Mother added that her mother “will be getting a caregiver’s check from the State to take care of me.”

Mother testified that DCS became involved when she tested positive for THC when giving birth to Ray S. DCS provided assistance for several months, which included buying Christmas presents and obtaining furniture for the Children. DCS continued to be involved with Mother and the Children in 2005 and 2006. In February of 2006, Mother’s oldest child, Deseria P., had lice and Ray S. was having behavioral issues. Ray S. had severe trouble hearing because his ears were almost completely clogged with wax.

Once DCS obtained custody of the Children, permanency plans were developed. Mother testified that she completed several of the requirements of the permanency plans, including undergoing a psychological assessment, completing parenting classes, and having a drug assessment. The permanency plans also required Mother and her husband to get a new place to live because their residence was unsafe for the Children. Thereafter, DCS came up with funds for Mother and Father to make a down payment on a new trailer. They lost that trailer thirteen months later because they were unable to make the monthly payments.

According to Mother, the Children were to be returned to her custody in the fall of 2007, but everything fell apart when Mother failed a drug test. Because of the failed drug test, the juvenile court stopped Mother’s visitation until she underwent treatment. Although Mother had an A&D assessment done in September of 2008, she has not undergone any treatment. Mother claimed the reason it took her ten months to have the assessment done was because of her medical problems. In particular, adjustments were being made to her pacemaker. Mother added that the reason she still has not undergone any treatment is because she has no medical insurance and cannot afford treatment. Mother admitted, however, that she has not sought DCS’s assistance with paying for her alcohol treatment. Her reason for this is because she has “given up on them.”

On cross-examination, Mother admitted that she had TennCare insurance between March and August 2008. When visitation was further restricted in August 2008, the juvenile court did allow Mother to remain in contact with the Children by sending them letters and cards. Mother claimed to have sent at least three letters.

DCS called Charlene Nighted (“Nighted”) as a witness. Nighted is employed by DCS in child protective services and first became involved with this family when Mother gave birth to Ray S., who was a “drug exposed infant.” Nighted also received a referral based on “environmental neglect and lack of supervision.” Nighted went to Mother’s home to discuss various matters. According to Nighted, Mother was “belligerent” and did not understand why marijuana use was a big deal. Nighted added that Mother stated “she does use marijuana and has no intention of stopping . . . because she doesn’t see how that affects her ability to care for her children.” Nighted also described the home as “absolutely deplorable.” Nighted stated the Children were “dirty” and the oldest child essentially was taking care of the other three. On subsequent visits to the house, Nighted again observed the oldest child taking care of the other three children. The oldest child was five years old at that time.

Lorrie Sweat (“Sweat”) is a case manager for DCS. Sweat received a referral from child protective services and was requested to work with the family to provide homemaking services, parenting education, and any other basic needs. When Sweat first became involved, there were four adults and four children living in a two bedroom trailer. Sweat tried several times to assist Mother with obtaining suitable housing. Mother and her husband had trouble finding housing due to their criminal background and credit history. At Christmas time, DCS gave Mother gifts to give to the Children.

James Nelson (“Nelson”) also works for DCS and was called as a witness. Nelson worked on Mother’s case from January 2007 until June 2008. While working on Mother’s case, Nelson attempted to address several issues, including the housing situation and Mother’s drug use. The initial goal was to reunify Mother with the Children.

Nelson assisted Mother with the development of the permanency plans. Two primary areas of concern were the need for safe and stable housing and Mother’s need to enter an A&D program. The first permanency plan also required the completion of parenting classes and required Mother to obtain a driver’s license.

During the first six months after the permanency plan was developed, Mother was taking steps to complete the plan and Nelson believed the Children eventually would be returned to Mother’s care. Mother and her husband had located stable housing. DCS provided a down payment of \$800 for them to buy a new trailer. Several churches donated funds so they could make a deposit on the utilities. Mother completed parenting classes and was working on other aspects of the permanency plan.

According to Nelson, things were moving in a positive direction, at least until Mother failed a drug test in September of 2007. Mother claimed she tested positive for THC because of the type of incense she was burning, and that she tested positive for cocaine because of benzocaine in her denture creme. Because of this failed drug test, a new permanency plan was developed with a new requirement that Mother obtain an A&D assessment and follow the requirements of that assessment. It was explained to Mother that she could lose her parental rights to the Children permanently if she did not complete the requirements of her plan.

In December of 2007, the parties returned to court. The juvenile court ordered that Mother enter an A&D program before she could resume visits with the Children.³ The juvenile court's order allowed phone contact between Mother and the Children, but no "face to face" visitation. Nelson stated that to his knowledge, Mother never requested phone contact with the Children after this order was entered. Nelson testified that after the December 2007 hearing, Mother no longer continued to work on completing the requirements of her permanency plan. Mother also no longer kept in contact with Nelson. If Nelson needed to contact Mother, he had to leave a message with Mother's mother.

The next witness was Allison Hodgus ("Hodgus"), who worked for DCS as a foster care case manager. Hodgus began working on Mother's case in September 2008.⁴ Hodgus testified that Mother's permanency plan required her to pay child support. To Hodgus' knowledge, Mother never paid any child support. The plan also required Mother to have an A&D assessment and to follow all recommendations. While Mother eventually did have the assessment, she has never undertaken the recommended treatment. Hodgus acknowledged that Mother's ability to visit with the Children was limited by the order entered by the juvenile court. Hodgus stated that while she worked on this case, Mother sent only one letter to the Children.

Hodgus met with Mother in December of 2008, at which time Mother and her husband had lost their trailer and were living with Mother's father. Mother was not employed.

Hodgus testified that the Children are living in foster care in Chattanooga. When asked how the foster care placement was going, Hodgus responded, "fabulous." The Children are receiving counseling and appear to be happy and healthy.

The Children's foster mother, Jennifer A. ("the Foster Mother"), was called as a witness. The Foster Mother described the Children as thriving and happy. Angel has been receiving counseling and her behavioral problems have improved. According to the Foster Mother, the Children have received only one letter from Mother. The Foster Mother is a school teacher and hopes to adopt the Children if they become available for adoption.

As to Mother's restricted visitation with the Children following her positive drug test, the two pertinent orders of the juvenile court were entered into evidence. More specifically, following a hearing in December 2007, the juvenile court entered an order stating as follows:

That the mother may not enjoy personal visitation with the children again until she can show clean drug screens and is in drug rehabilitation treatment. The children and the mother may enjoy phone contact, but no face to face contact.

³ Nelson was careful to point out that Mother only had to enter a drug rehabilitation program to resume visitation; she did not have to complete the program prior to visitation being resumed.

⁴ Hodgus' employment with DCS ended approximately one week before trial.

Following a hearing in August 2008, the juvenile court entered an order stating that “the mother shall have no visitation with the children except through letters and cards. . . .”

After the trial was completed, the Trial Court entered a detailed order terminating Mother’s parental rights. According to the Trial Court:

Based on all the testimony, the record before the Court and the exhibits, the Court [finds] as follows:

* * *

The Anderson County Juvenile Court adjudicated the children dependent and neglected on March 8, 2007, after issuing an emergency protective order placing the children in temporary state custody on January 25, 2007.

The children have been in foster care continuously since the Juvenile Court’s protective custody order, although two of their siblings have been divested to their father. . . .

DCS proved by clear and convincing evidence that grounds for termination of [Mother’s] parental rights exist pursuant to T.C.A. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(i), - 102(1)(C) and -102(1)(E). In the four months before the petition was filed - from September to December 2008 - [Mother] had contact with the children only one time It is true that, in August 2008, the Juvenile Court limited [Mother’s] visitation to cards and letters only, due to a recommendation by the children’s therapist. . . . Further, the order did allow [Mother] to have contact with the children through cards and letters. [Mother] communicated with the children only one time. . . . This lack of contact by [Mother] is symptomatic of the preceding period of time - in the nine months prior to the August ruling, [Mother] did not have any contact with the children. The Juvenile Court had ordered in December 2007 that [Mother] could not visit with the children until she entered alcohol and drug treatment. [Mother] did get an alcohol and drug assessment in September 2008, but she never entered treatment. . . . It has been 1.5 years since the children had any regular contact with [Mother], and [Mother] signed a statement saying that [she] received an explanation of what might happen if [she] failed to visit regularly. [Mother has] abandoned [her] children. . . .

DCS proved by clear and convincing evidence that grounds for termination of [Mother’s] parental rights exist pursuant to T.C.A. §§ 36-1-113(g)(2) and 37-2-403(a)(2). After the children came into

foster care, DCS and [Mother] met and created permanency plans The children's first permanency plans were created in February 2007. They required [Mother] to obtain safe and stable housing and to keep it, to refrain from drug use and to submit to random drug screens, to complete parenting classes at [her] own expense, and to get [her] driver's license. The plans also required [Mother] - who tested positive for cocaine and marijuana through February of 2007 - to provide a clean drug screen before she could visit the children, and to get a mental health and alcohol/drug assessment. [Mother] signed, agreeing with the plans. The requirements were reasonably related to the reasons for foster care - drug use had prevented the parents from taking appropriate care of the children, who were filthy and who were suffering from patchy school attendance, and the family had hopped from home to home without providing the children a healthy, clean environment. DCS's history with the family also led it to have concerns about [Mother's] mental health. Later permanency plans reiterated the original requirements for housing, jobs, and A&D treatment, and noted the tasks that [Mother] had completed: The plans stated that DCS had provided [Mother] a down payment for a trailer, so [she] had gotten stable housing in June 2007. . . . [Mother] had completed parenting classes . . . and gotten a psychological assessment, which required no treatment. She had passed random drug screens. In the fall of 2007, however, [Mother] tested positive for illegal drugs again, and [she] didn't make payments on the trailer and lost it. The permanency plans were revised again, reiterating the requirements for housing and jobs and requiring both parents to get alcohol/drug assessments, follow the recommendations and submit to random drug screens, due to the failed drug screens. [Mother has not] substantially complied with the permanency plans. Although more than two years has elapsed since the children were removed, [Mother does not have] stable housing . . . [or] stable employment. . . . [Mother had an alcohol/drug assessment], but has not begun the treatment it recommended. These were the most crucial items in the plans, and they are the ones that [Mother] failed to satisfy.

DCS proved by clear and convincing evidence that grounds for termination of [Mother's] parental rights exist pursuant to T.C.A. § 36-1-113(g)(3) - in reality, the same conditions exist now in [Mother's] home that existed when the children were placed in foster care two years ago. [Mother has] persistently failed to remedy the issues that existed and were recognized and identified in the children's permanency plans. [Mother has] no stable home - [she testified] to moving repeatedly over the past several years, and [Mother] is back living in a two-bedroom trailer with [her] father.

[Mother has] no job and no transportation. [Mother has] failed to seek . . . recommended [A&D] treatment, which played a big part in [her] failure to make necessary changes. [Mother has not] demonstrated any ability to effectively parent the children and provide for their needs. Further, . . . [Mother has not seen] the children in more than a year. [Mother] has sent the children only one note. Any relationship that Angel P. may have had with her mother has disappeared. . . . There is little chance that [these] conditions will be remedied soon so that the children can be returned safely to the home because DCS has tried to help this family correct its problems for years, without success. Continuation of the parent/child relationship greatly diminishes the children's chances of being placed into a safe, stable and permanent home.

DCS proved by clear and convincing evidence that termination of [Mother's] parental rights is in the children's best interests pursuant to T.C.A. § 36-1-113(i). These children have no meaningful relationship with [Mother]. [Mother] has not made changes in [her] circumstances, despite many efforts by the state to help [her]. It does not appear that [she is] going to do so. [Mother has] failed to keep in contact with the children . . . [and continues] to resist A&D treatment. [She] cannot support [herself], much less these children. It appears that [she is] unable or unwilling to make the changes that would make it safe for the children to go home. In contrast, these children are placed in a loving and appropriate home. They are getting the therapy they need, and they are happy and thriving. Their foster parents love them, and they will adopt them.

The record is replete with evidence that DCS has gone far beyond what is normally expected to make reasonable efforts to assist this family and try to reunify the children with [Mother]. Before these children were placed in custody . . . DCS placed a variety of services in the home. . . . After the children were placed in DCS custody, DCS paid for the parents to get evaluations required by the Juvenile Court, paid for a down payment on a new mobile home for them, provided them with therapeutic visitation services, and with regular case management.

Based on these findings, IT IS ORDERED that

All the parental rights that . . . [Mother has] to the subject children are forever terminated. . . .

Mother appeals and claims that: (1) the Trial Court erred when it found that DCS had proven by clear and convincing evidence that grounds existed to terminate her parental rights; and

(2) the Trial Court erred when it found that DCS had proven by clear and convincing evidence that termination of her parental rights was in the Children's best interest. DCS argues that the Trial Court's judgment should be affirmed in all respects.

Discussion

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights in *In re F.R.R., III*, 193 S.W.3d 528 (Tenn. 2006). According to the Supreme Court:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

Id. at 530.

The statutory provisions upon which the Trial Court terminated Mother's parental rights are Tenn. Code Ann. §§ 36-1-113(g)(1) - (g)(3) (Supp. 2009), which are as follows:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home

We first address whether the Trial Court erred when it found that Mother had abandoned the Children by willfully failing to visit them. The definition of "abandonment" relied upon by the Trial Court is found at Tenn. Code Ann. §§ 36-1-102(1)(A)(i), - 102(1)(C) and - 102(1)(E) (Supp. 2009), which state:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

* * *

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

* * *

(E) For purposes of this subdivision (1), "willfully failed to visit" means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation

In the present case, there was no visitation between Mother and the Children during the relevant four month period. The reason for this was that such visitation was expressly prohibited by order of the juvenile court, at least until Mother began A&D treatment. There were several months before the relevant four month period in which Mother could have obtained the A&D assessment and began treatment. Had she done so, her visitation likely would not have been so restricted. DCS argues that because Mother willfully failed to obtain the A&D assessment and begin treatment well before the relevant four month period began, she still must be considered to have “abandoned” the children. In other words, her actions (i.e., willfully not going to treatment) had consequences (i.e., no face-to face visitation until A&D treatment begins), and she cannot hide behind the consequences of her actions and claim she did not visit the Children because of the juvenile court’s order.

While DCS’s argument is inviting, we are reluctant to hold under the facts of this case that Mother abandoned the Children. There are two reasons for our reluctance. First, Mother testified she was totally disabled at the relevant time and unable to work. Consequently, she claimed she was unable to afford treatment. Second, Mother claims that due to her physical ailments, she was physically unable to go to treatment. We acknowledge that there is evidence in the record contradicting Mother’s position on these two points. Nevertheless, we do not think DCS has established, clearly and convincingly, that Mother was both physically and financially able to pay for and go to treatment. In fact, DCS does not mention these points in the portion of its brief addressing the abandonment issue.

In light of the foregoing, we cannot conclude that Mother willfully refused to go to treatment and, as a result, willfully abandoned the Children when the consequences of her inactions resulted in a loss of visitation privileges. The judgment of the Trial Court finding that Mother abandoned the Children by willfully failing to visit them is, therefore, vacated.

The next issue is whether the Trial Court correctly determined that Mother failed to substantially comply with the requirements of her permanency plan. The proof established that the main areas Mother needed to address were housing, being able to financially support the Children, and staying drug free. She also needed to obtain a driver’s license. The proof at trial showed that since the time Mother failed the drug test in 2007, she has done nothing of substance toward getting the Children back. Mother does not have stable housing and has not for some time. At the time of trial, Mother was relying on her unemployed parents to pay her bills. Mother still does not have a driver’s license and will be required to depend on other people to transport the Children to school, the doctor, etc. Mother was unable to stay drug free, a critical requirement of the plan.

The proof at trial was such that DCS had presented clear and convincing evidence to the Trial Court establishing Mother’s failure to substantially comply with the statement of responsibilities contained in her permanency plans. Accordingly, we affirm the judgment of the Trial Court that DCS had proven clearly and convincingly that grounds existed to terminate Mother’s parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(2).

The third ground upon which the Trial Court terminated Mother’s parental rights is found at Tenn. Code Ann. § 36-1-113(g)(3) and is commonly referred to as “persistent conditions.”

As to this ground, there is no question that the Children have been removed from the home for at least six months. The conditions which led to their removal or other conditions still exist which would prevent the Children's safe return to Mother's care; in particular, Mother's lack of suitable housing, inability to take care of the Children financially, and inability to remain drug-free. As of the day of trial, Mother and her husband were living in a two bedroom trailer with Mother's father. This obviously would not be a proper environment for two children to move into. More importantly, Mother has not demonstrated that she has the ability to provide a safe and stable home for the Children in the near future. A parent cannot reasonably expect the return of her children if she has not and cannot demonstrate that she can provide suitable housing and otherwise take care of the children. We further agree with the Trial Court that continuing the parent and child relationship in this case greatly reduces the chances that the Children would be integrated into a safe and stable home. This is even more apparent when considering they are in a good foster home and the foster parents are desirous of adopting the Children.

We affirm the judgment of the Trial Court that DCS had proven, clearly and convincingly, that grounds existed to terminate Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

Finally, we address the Trial Court's determination that DCS had proven, clearly and convincingly, that termination of Mother's parental rights was in the Children's best interest. The pertinent statutory provision is Tenn. Code Ann. § 36-1-113(i) (Supp. 2009) which provides:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

For the sake of brevity, we will not restate all of the pertinent facts. Suffice it to say, however, that Mother is clearly unable to take care of the Children properly. Mother simply has made no adjustment to her circumstances that would make it safe for the Children to be returned to her care now or at any time in the near future. The Children currently are placed in a good foster home and the foster parents are desirous of adopting them. The proof is inescapable that the best interest of these Children is served by terminating Mother's parental rights and allowing these Children to be integrated into a safe and stable home. Accordingly, we affirm the judgment of the Trial Court finding that DCS had proven by clear and convincing evidence that termination of Mother's parental rights was in the Children's best interest.

Conclusion

The judgment of the Trial Court is affirmed as modified. This cause is remanded to the Trial Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Denise S., and her surety, if any, for which execution may issue, if necessary.

D. MICHAEL SWINEY, JUDGE